No. 86-1033

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

SIDNEY L. JAFFE, MEADOW VALLEY RANCHOS INCORPORATED, RUBY MOUNTAIN CONSTRUCTION AND DEVELOPMENT CORPORATION, AND ATLANTIC COMMERCIAL DEVELOPMENT CORPORATION,

Petitioners,

v.

CHARLES W. GRANT, individually and as Trustee in Bankruptcy for CONTINENTAL SOUTHEAST LAND CORPORATION, and as Receiver,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

TERRANCE E. SCHMIDT
BLEDSOE, SCHMIDT & GLENN, P.A.
2501 Independent Square
Jacksonville, Florida 32202
(904) 356-2501

Counsel for Respondent

MILLER PRESS JACKSONVILLE FLORIDA (904) 396-0900

LIST OF PARTIES

Petitioners incorrectly identified Respondent in their List of Parties. Respondent obtained the final judgment below and is a party to this proceeding only in his capacity as trustee in bankruptcy for Continental Southeast Land Corp., bankrupt. (R.2886-87)

LISTING PURSUANT TO RULE 28.1

Meadow Valley Ranchos, Inc., purports to be the parent corporation of Continental Southeast Land Corp., bankrupt.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES Page

STATUTES, RULES AND REGULATIONS

No. 86-1033

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

SIDNEY L. JAFFE, MEADOW VALLEY RANCHOS INCORPORATED, RUBY MOUNTAIN CONSTRUCTION AND DEVELOPMENT CORPORATION, AND ATLANTIC COMMERCIAL DEVELOPMENT CORPORATION,

Petitioners,

v.

CHARLES W. GRANT, individually and as Trustee in Bankruptcy for CONTINENTAL SOUTHEAST LAND CORPORATION, and as Receiver,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Petitioners have misstated the facts and omitted material facts throughout their Statement of the Case. Respondent Charles W. Grant, as Trustee in Bankruptcy for Continental Southeast Land Corp., bankrupt ("Trustee"), has corrected the material misstatements and omissions in the following section of the brief.

Petitioners' recitation of events preceding Jaffe's assertion of his Fifth Amendment privilege in September 1984 is not

material to either point argued by petitioners. Specifically, petitioners contend that the district court "penalized" them (Point I) or "departed from fair standards in the administration of justice" (Point II) by reconsidering and granting the Trustee's motion for final judgment *after* Jaffe sought to invoke his Fifth Amendment privilege. Accordingly, the background facts regarding events occurring prior to September 1984 are immaterial to the points argued by petitioners, and the inaccuracies as to those facts have been ignored by the Trustee.

REASONS FOR DENYING THE PETITION

The decision below does not conflict with any decisions of this Court or other courts of appeal on the issues raised by petitioners, and neither the facts nor the law supports their claims.

Petitioners combined their argument on the first two questions presented for review. However, for purposes of clarity, the Trustee has separated his arguments on those questions.

POINT I

THE DECISION BELOW DOES NOT CONFLICT WITH ANY DECISIONS OF THIS COURT OR OTHER COURTS OF APPEAL REGARDING JAFFE'S FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION

(a) Jaffe Had No Fifth Amendment Privilege to Prevent Production of Corporate Documents

Petitioners contend that the decision below conflicts with *United States v. Doe*, 465 U.S. 605 (1984), and *Fisher v. United States*, 425 U.S. 391 (1976), because Jaffe was the alter ego of the petitioner corporations and it was "undisputed and indisputable" that Jaffe was the "only active officer" of the petitioner

corporations and the "only person who could respond" on their behalf to the Trustee's second request for production of documents. (Pet., pp.11-12, 14) Petitioners are wrong on the facts and law.

(i) *Petitioners Failed to Preserve the Issue Below*

In their initial brief below, petitioners did not assert that Jaffe could invoke the Fifth Amendment on behalf of the corporate petitioners. In his reply brief, Jaffe made only a two-paragraph statement (unsupported by any authority) that he was justified in asserting the privilege because he had been determined to be the alter ego of the petitioner corporations. (Jaffe reply brief, p.5) None of the petitioners ever contended below that Jaffe was the "only active officer" or "only person who could respond" on behalf of the petitioner corporations to the production request, and none of the petitioners ever even cited *Doe, Fisher,* or any of the circuit court decisions upon which they now rely to establish the purported conflict. Accordingly, this issue, which for the reasons stated below is subject to vigorous factual dispute, was not properly preserved below. *G. D. Searle & Co. v. Cohn,* 455 U.S. 408, 412, n.7 (1982).

(ii) *The Facts Do Not Support Petitioners' Assertion of Conflict*

The sole support for petitioners' contention that Jaffe was the only person who could respond to the corporate discovery is a sentence in a motion to withdraw filed by petitioners' then-counsel after Jaffe consented to the withdrawal on his own behalf but objected to the withdrawal on behalf of the corporations. (R.2732-36; Resp. App. A-1, ¶¶3–7) The statement was not evidentiary and was "undisputed" only because the Trustee did not oppose the motion to withdraw.

On the other hand, petitioners' sworn answers to interrogatories, signed by Jaffe in each case, stated that Atlantic Commercial had 3 equal shareholders, 3 directors, and 3 officers, including Jaffe (R.619-20, 650-51), Ruby Mountain was a wholly-owned subsidiary of Atlantic Commercial (R.634-35), and Meadow Valley had 3 directors and 3 officers, including Jaffe, and its shareholders were so numerous that rather than name them, Meadow Valley referred the Trustee to Meadow Valley's transfer agent. (R.666-67) Jaffe also filed an affidavit stating he had instructed "the staff of our companies in Toronto and Nevada" to gather requested documents for purposes of production in response to the Trustee's third motion for sanctions. (R.1576) Petitioners never sought to supplement or change their interrogatory answers, and there is no subsequent evidence in the record to controvert the sworn statements described above.

The pertinent production request as to which Jaffe purportedly exercised his individual Fifth Amendment privilege was not a subpoena *duces tecum* directed to him personally. It was a Rule 34, F.R.C.P., request for production directed to *all* petitioners. (R.1639-43) Thus, the petitioner corporations could have produced their documents through counsel pursuant to a Rule 34, F.R.C.P., response identifying the documents produced on behalf of each corporation and avoided any purported "compelled testimony" by Jaffe, individually.

(iii) *The Law Does Not Support Petitioners' Assertion of Conflict*

There are no cases upholding an individual's right to invoke his personal Fifth Amendment privilege as a shield to prevent production of corporate documents pursuant to a request for production in a civil action simply because he has been judicially determined to be the alter ego of the corporations, and petitioners cite no authority for that contention. The alter ego doctrine is based upon the use of the corporate form to mislead or

defraud third parties and not upon the fact that the corporation is controlled by one or more persons. *See Sirmons v. Arnold Lumber Co.*, 167 So.2d 588, 589 (Fla. App. 1964). The determination that one person is the alter ego of a corporation has no bearing on whether production of documents *by the corporation* would or even might constitute "compelled testimony" by that person.

The purported conflict between the decision below and *Doe* and *Fisher* does not exist. Neither case involved the assertion of the privilege by a corporate records custodian, and neither case even purported to limit, recede from or overrule the long line of Supreme Court precedent recognizing the collective entity doctrine. *See Fisher v. United States, supra,* at 411-12; *Bellis v. United States*, 417 U.S. 85, 88-91 (1974); *In re Grand Jury Subpoena Duces Tecum (Ackerman)*, 795 F.2d 904 (11th Cir. 1986).

Petitioners also cite *In re Grand Jury Matter (Brown)*, 768 F.2d 525 (3rd Cir. 1985) (*en banc*) ("*Brown*"); *In re [sic] Grand Jury Subpoena [sic] Duces Tecum*, 769 F.2d 52 (2nd Cir. 1985) ("*Two Grand Jury Subpoenae*"); and *In re Grand Jury Proceedings (Morganstern)* 747 F.2d 1098 (6th Cir. 1984), *[sic] cert. denied* 106 S.Ct. 594 (1985) ("*Morganstern*"), as circuit court decisions which conflict with the decision below. Each case is clearly distinguishable and, in fact, supports rather than conflicts with the decision below.

In *Brown*, the Third Circuit reversed a civil contempt order against the corporate custodian (and sole owner) of a corporation for refusal to obey a grand jury subpoena duces tecum addressed to him personally to bring documents "prepared by you or under your supervision." However, the court stated:

> "Records of collective entities still must be maintained, and their production can be compelled by a subpoena *duces tecum* addressed *to the entity*."

Id. at 528. (Emphasis added) *See also In re Grand Jury Subpoena (85-W-71-5)*, 784 F.2d 856, 862 (8th Cir.) *cert. dism.* 107 S.Ct. 918 (1987) (distinguishing *Brown*).

In *Two Grand Jury Subpoenae*, *supra*, the Second Circuit held that the "sole operating officer" of a corporation could not use the Fifth Amendment as a shield to prevent the corporation from producing subpoenaed documents, stating:

> "There simply is *no situation* in which the Fifth Amendment would prevent a corporation from producing corporate records, for the corporation itself has no Fifth Amendment privilege."

Id. at 57. (Emphasis added)

Petitioners' reliance on the Third Circuit panel decision in *Morganstern* is erroneous. The panel decision cited by petitioners was *reversed in 1985* after *en banc* rehearing, and this Court denied certiorari from the *en banc* decision rather than the decision cited by petitioners. *In re Grand Jury Proceedings, (Morganstern)*, 771 F.2d 143 (6th Cir.), *cert. denied* 106 S.Ct. 594 (1985). The *en banc* decision unequivocally holds that *Doe* does not authorize a corporate custodian to assert his personal Fifth Amendment privilege to prevent production of corporate documents by him in his representative capacity. *Id.* at 148.

Each case upon which petitioners rely clearly limits even a hypothetical extension of *Doe* to subpoenae directed to individuals whose compliance would have a self-incriminating testimonial impact. No case has held the "production as compelled testimony" doctrine applicable to a request for production of corporate documents to which the corporation must respond through its counsel rather than through an individual corporate representative. *See Palazzo v. Gulf Oil Corp.*, 764 F.2d 1381

(11th Cir.), *cert. denied* 106 S.Ct. 799 (1986). Accordingly, the decision below is entirely consistent and does not conflict in any respect with the decisions cited by petitioners.

(b) Petitioners Were Not Denied Due Process and Improperly Penalized for Jaffe's Assertion of his Fifth Amendment Privilege

Petitioners contend they were denied due process and penalized for Jaffe's assertion of his Fifth Amendment privilege because the district court purportedly responded to Jaffe's assertion of the privilege abusively by "prompting" and "encouraging" the Trustee to renew a motion for final judgment denied by the court the month before and then granting the motion and entering a final judgment (which petitioners erroneously analogize to "automatic dismissal" of a complaint as a sanction) rather than granting Jaffe's motion to stay[1] the case until completion of his pending criminal proceeding. (Pet., pp.8, 12–15) Petitioners assert that the decision below conflicts primarily with *Wehling v. Columbia Broadcasting System*, 608 F.2d 1084 (5th Cir.), *reh'g denied* 611 F.2d 1026 (5th Cir. 1980), and *dicta* from *United States v. Kordel*, 397 U.S. 1 (1970). (Pet., pp.12–15) They also argue that the courts below erred in finding that Jaffe had "waived" his Fifth Amendment privilege. (Pet., p.15) Finally, they argue that any waiver should be excused because petitioners were "deprived...of the effective assistance of counsel below." (Pet., p.16)

---

[1]Petitioners make a point of arguing that "even the District Court acknowledged [that] all petitioners moved to stay discovery," citing the court's order granting the motion for final judgment. (Pet., pp.14-15) However, petitioners' counsel filed a motion to abate on behalf of Jaffe only. (R.2710-17) Although Jaffe sought to file a *pro se* motion to stay on behalf of himself and the corporations (R.2738*), he had no authority to represent the corporations. *Palazzo v. Gulf Oil Corp., supra.* The corporate petitioners sought an extension of time to produce the documents (R.2726-31), but did not seek a stay in the district court. Accordingly, the district court's reference to "all plaintiffs" in its order was simply erroneous, and the corporate petitioners did not properly preserve the separate due process claims they now seek to assert.

(i) *The Facts Do Not Support Petitioners' Assertion of Conflict*

Petitioners contend the district court responded abusively and made the statements quoted in petitioners' brief "when advised of the petitioner's [sic] assertion of the privilege." (Pet., p.8) That is not true. The court's comments were made in the context of and response to its having been advised by petitioners' counsel that Jaffe had withheld corporate records despite being advised by his counsel that he was obligated to produce them (R.2744, p.15), and that Jaffe intended to represent himself *pro se* "through the mails" but would not appear before the court. (R.2744, p.17) The court's comments were also made in the context of petitioners' having repeatedly changed counsel (R.84-86, 1339-41, 1362-65, 2732-36, 2888-89, 2932-34)[2] and the court's previous findings that petitioners had engaged in bad faith discovery tactics to delay or prevent a final resolution of the case. (R.1460–67, 1591–94, 2744, pp.22–23, 2938, pp.25–28)

The district court neither "prompted" nor "encouraged" the Trustee to renew his motion for final judgment. In fact, when the Trustee requested that the court reconsider the motion at the very beginning of the status conference (R.2744, p.2) and argued in support of his request, the court stated:

> "Now, wait a second. So you are renewing your motion for the entry of the final judgment for the amount of three million dollars?"

(R.2744, p.14)

The district court did not penalize or enter the final judgment as a sanction against petitioners nor could it have done so. The motion for final judgment was no more or less than a motion

[2]At least *three* counsel have cited improper actions or requests by petitioners as the basis for withdrawal below. (R.1339-41, 2732-36; Notice of Withdrawal of Counsel Syprett, Meshad, Resnick & Lieb, P.A., filed in appeal below on May 31, 1985)

for summary final judgment on Count II of the counterclaim on the grounds that there were no disputed issues of fact and the Trustee was entitled to judgment as a matter of law in the minimum amount of $3 million based upon the state court's supplemental final judgment and the principles of *res judicata*. (R.1650–51; App. A-22) The court simply reconsidered the Trustee's motion for final judgment and granted the motion *based upon the evidence in the record*.[3] In fact, the effect on petitioners was no different than if the court had granted the motion when it was first considered the preceding month—after Jaffe raised but did not assert the privilege but *before* he filed his motion for stay.

Petitioners' assertion that the district court failed to consider the balancing approach described in *Wehling* is also erroneous. In its order granting the motion for final judgment, the court specifically found that there had been no showing of prejudice to petitioners by the court's ruling on the motion for final judgment which had then been fully briefed and pending for more than two years. (Pet. App. A-28)

Petitioners' assertion that Jaffe did not "intentionally and knowingly" waive his Fifth Amendment privilege as found by

---

[3]Although it is immaterial, the circumstances were not the same when the court granted the motion for final judgment as when it earlier denied the motion along with seven other pending motions. At the September 20, 1984, status conference, the Trustee advised the court that he was abandoning Count I and, for purposes of the motions for reconsideration and final judgment, any claim for damages in excess of $3 million under Count II to the extent that the discovery information wrongfully withheld by petitioners since 1981 might disclose that they had collected greater amounts. (R.2744, pp.2–6; *see also* Pet. App. A-19) Petitioners' argument against the motion for reconsideration confirmed that the only disputed issues in the motion for final judgment were issues of law not fact. (R.2744, pp.17–22) Although the court gave petitioners an opportunity to supplement their response to the motion for final judgment, they did not do so, and the court specifically found in its order granting final judgment that petitioners did not assert that there were any disputed issues of fact. (Pet. App. A-22) Petitioners did not argue in the Eleventh Circuit that there were disputed issues of fact under Count II which should have prevented entry of the judgment. Thus, the context in which the court granted the motion was significantly different than that in which it had earlier denied the motion, and the judgment was fully supported by the undisputed facts in the record.

the district court and Eleventh Circuit is immaterial because he was not penalized for asserting the privilege. However, petitioners' non-waiver argument is contradicted by the facts in the record. Jaffe raised—but did not invoke—his Fifth Amendment privilege in November 1981 and again in April 1984 (after all "new charges" had been filed) in response to the Trustee's discovery requests (R.539-42, 2656-57) but deliberately withheld invoking of the privilege until after the magistrate had denied all of the petitioners' other objections to discovery at the September 4, 1984, hearing. (R.2710-17, 2738*, 2946) Jaffe then sought to assert a *blanket* Fifth Amendment privilege to all interrogatories and requests for production directed to him (including an interrogatory asking for his full name and address which he disclosed on his motion asserting the privilege and subsequent *pro se* motions). (R.2738*, 2909-11) Jaffe failed to timely and properly assert his Fifth Amendment privilege and by his own tactical delay lost the benefit of the privilege.

Petitioners were not "deprived of effective assistance of counsel below"—an argument admittedly not made to the appellate court. (Pet., p.16) In actual fact, Jaffe is or purports to be a law school graduate (R.1757-58); counsel of record below included Robert Jaffe (Jaffe's attorney brother) (R.18, 544-45); and Harold Jaffe (Jaffe's attorney son) executed an affidavit in support of a motion to disqualify the Trustee's counsel and was actively involved in petitioners' incomplete document production. (R.210-11, 1588) Jaffe sought to file his own *pro se* motion asserting the Fifth Amendment privilege in the district court (R.2738*), and Jaffe and the petitioner corporations were represented by two attorneys, including a constitutional law professor at Holland Law Center, University of Florida, in their appeal below. (Pet. App. A-3) Prior to filing their petition herein, *none* of

petitioners' prior counsel ever raised the *Doe* "production as compelled testimony" argument which is the crux of their petition.

(ii) *The Law Does Not Support Petitioners' Assertion of Conflict*

The final judgment was not analogous to an "automatic dismissal" as a sanction or penalty reviewable only for abuse of discretion. It was a summary final judgment reviewable on the merits. There is no conflict with the "penalty" cases cited by petitioners.

Because petitioners' own sworn statements refute their contention that Jaffe was the only one who could respond to the corporate production request, there is no conflict with the *dicta* from *Kordel* cited by petitioners, and this case does not present an opportunity to decide the issue left unanswered in that case.

The "waiver" issue is immaterial to the decisions below because there was no privilege as to the corporate documents, petitioners were not "penalized" for Jaffe's assertion of the privilege, and neither Jaffe nor the petitioner corporations ever submitted to the discovery sought by the Trustee. Nevertheless, the facts support the findings below that Jaffe's tactical delay in asserting the privilege constituted a waiver or loss of benefit of the privilege. *See Kordel, supra* at 10, n.18; *See also Garner v. United States*, 424 U.S. 648, 654, n.8, 9, 658, n.11 (1976), and cases cited therein; *Estelle v. Williams*, 425 U.S. 501, 514-15 (1976) (Powell, J., concurring)

POINT II

THE DISPOSITION OF PETITIONERS' CLAIMS WAS CONSISTENT WITH FAIR STANDARDS IN THE ADMINISTRATION OF JUSTICE

For the reasons stated above, the facts do not support petitioners' claim that there was any departure from fair standards

in the administration of justice below, and none of the cases cited by petitioners is even remotely relevant to this case. As the Eleventh Circuit correctly observed:

> "Jaffe et al. received not only the minimum process that was due, but also a great deal more."

(Pet. App. A-16) *See also United States v. Kordel, supra* at 11.

CONCLUSION

For the reasons stated above, certiorari should be denied.

Respectfully Submitted,

TERRANCE E. SCHMIDT
Bledsoe, Schmidt & Glenn, P.A.
2501 Independent Square
Jacksonville, Florida 32202
(904) 356-2501
Attorneys for Respondent

APPENDIX

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE, DIVISION

SIDNEY L. JAFFE, et al *Plaintiff,* vs. E. L. EASTMOORE, et al., *Defendants.*	CASE NO: 81-427-CIV-J-16

MOTION FOR WITHDRAWAL AS COUNSEL OF RECORD FOR PLAINTIFFS AND MEMORANDUM OF LAW

COMES NOW Lansing J. Roy of Lansing J. Roy, P.A. pursuant to local Rule 2.03(b) and moves the Court for an Order allowing the withdrawal of Lansing J. Roy and Lansing J. Roy, P.A. as attorney of record for Plaintiffs herein. In support of the Motion it is shown unto the Court as follows:

1. On August 11, 1982, this Court entered an Order granting a Motion For Substitution Of Counsel wherein Lansing J. Roy, Esquire, substituted for the law firm of Rice, O'Dell and Goldman as one of Plaintiffs attorneys of record.

2. In granting the Motion For Substitution Of Counsel the Court referred to the premise in law that an attorney-client relationship may always be terminated by a client with or without cause. *Fluhr vs. Roberts*, 463 F. Supp. 745 (D.C. Ky. 1979); *Potts vs. Mitchell*, 410 F. Supp. 1278 (D.C., N.C. 1976).

3. By telephone conversation on Friday, September 14, 1984, SIDNEY L. JAFFE advised Lansing J. Roy that he consented

to the withdrawal of Lansing J. Roy and Lansing J. Roy, P.A. as legal counsel for SIDNEY L. JAFFE in these proceedings.

4. SIDNEY L. JAFFE does not consent to Lansing J. Roy and Lansing J. Roy, P.A. withdrawing as legal counsel for the corporate plaintiffs. This Motion For Withdrawal requests an Order authorizing withdrawal on behalf of all parties plaintiff.

5. The undersigned is preparing and forwarding to Toronto, Canada a Stipulation For Withdrawal to be executed by SIDNEY L. JAFFE as it relates to withdrawal as counsel of record for SIDNEY L. JAFFE individually.

6. For cause to support the Motion To Withdraw as Counsel of Record for the Plaintiff corporations, the following is shown to the Court.

7. SIDNEY L. JAFFE is the only active corporate officer of the plaintiff/corporations and is the only officer that the undersigned has had any dealings with on behalf of the corporations.

8. The relationship between the undersigned and SIDNEY L. JAFFE has substantially deteriorated over the past several months to the point where the undersigned does not feel that he can continue to represent either SIDNEY L. JAFFE individually or the corporations.

9. SIDNEY L. JAFFE has made and continues to make requests for legal steps to be taken that the undersigned does not believe that he can take in good faith. The undersigned is on the horns of dilemna to the extent that the client is requesting on behalf of himself and the corporations that certain actions be taken and legal counsel determining in his own mind that he cannot take the requested actions.

10. This has led to a series of pleadings being filed by SIDNEY L. JAFFE in *propria persona*.

11. This Court by way of its Order of August 6, 1984, struck all of the pleadings filed by plaintiff, SIDNEY L. JAFFE in *propria persona* and directed the Clerk of the Court to return all further pleadings attempted to be filed by SIDNEY L. JAFFE *unless and until his counsel of record withdraws from representing him.*

12. Local Rule 2.03(b) provides that an attorney who has made a general appearance shall not thereafter abandon the case in which the appearance was made or withdraw as counsel for any party therein without leave of Court obtained after giving ten days notice to the party or clients affected thereby and to opposing counsel. The undersigned interprets that section to mean that until an Order is entered authorizing the withdrawal that the interest of the clients are to be protected.

13. The undersigned has filed at the same time that this Motion is being filed, a Motion For a Protective Order on behalf of SIDNEY L. JAFFE. This Motion For Protective Order raises Fifth Amendment rights. In addition to that motion, however, SIDNEY L. JAFFE wanted the undersigned to file a motion on behalf of SIDNEY L. JAFFE individually and the corporations asking for a "sealing Order" as a condition precedent to production of the corporate documents. The undersigned was unwilling to file such a motion on behalf of SIDNEY L. JAFFE and/or the plaintiff/corporations. The reason for that decision is that there are no facts or law to support such a motion.

14. SIDNEY L. JAFFE wanted the undersigned to advance an argument that based on the cases of *Sperry Rand Corporation vs. Rothlein*, 288 F.2d 247 (1961); *International Products Corp. vs. Koons*, 325 F.2d 403 (1963); *United States vs. United Fruit Company*, 410 F.2d 553 (1969); *In re Halkin*, 598 F.2d 188 (1979); *Weiner vs. Bach E. Halsey Stuart*, 76 F.R.D. 624 (S.D. Fla. 1983) and *Martindale vs. International Tel and Tel*, 594

F.2d 291 (2nd Cir. 1982) that this Court should enter such an order.

15. The factual basis that SIDNEY L. JAFFE proposed that I set forth in the motion and be prepared to establish to the Court is that counsel for Grant and/or Defendant Grant have provided discovery material out of this and other civil cases to Stephen L. Boyles, State Attorney, for his use in criminal prosecutions against SIDNEY L. JAFFE. SIDNEY L. JAFFE would have the undersigned allege that there was colusion [sic] between Defendant Grant and his counsel and Stephen Boyles wherein both the spirit and letter of the Federal Rules of Discovery have been violated.

16. SIDNEY L. JAFFE would have had the undersigned request the Court to condition production of any of the corporate documents on a sealing order such that the documents could not be used in any criminal proceeding. The undersigned is not aware of any law that would be applicable to the instant circumstances to support such a motion.

17. SIDNEY L. JAFFE proposes to file documents of his own in *propria persona* dealing with this issue and other issues before the Court.

18. Based on the aforestated circumstances, the undersigned can not continue to represent any of the parties plaintiff and requests the Court to enter an order authorizing withdrawal.

19. For further grounds in support of this motion, the undersigned has advised SIDNEY L. JAFFE that he is legally obligated to produce corporate documents, however, he has failed to do so.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion For Withdrawal As Counsel Of Record For

Plaintiffs And Memorandum of Law was furnished to Sidney L. Jaffe, 110 Bloor Street West, Toronto, Ontario, M5S2W7, by United States Mail and to Terrance E. Schmidt, Esquire, BLEDSOE & SCHMIDT, 2900 Independent Square, Jacksonville, Florida, 32202 on the 14th day of September, 1984 by Hand Delivery.

LANSING J. ROY, P.A.

Lansing J. Roy, Esquire
Attorney for Plaintiff
P.O. Box 750
Keystone Heights, FL 32656
1-904-473-7256